Filed in District Court
State of Minnesota
4/30/2019 9:28 AM

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF HENNEPIN **FOURTH JUDICIAL DISTRICT**

State of Minnesota by Smart Growth Minneapolis, a Minnesota nonprofit corporation, Audubon Chapter of Minneapolis and Minnesota Citizens for the Protection of Migratory Birds, Plaintiffs, vs. City of Minneapolis, Defendant.	Court File No. 27-CV-18-19587 Case Type: Civil Other Judge Joseph R. Klein **ORDER GRANTING DEFENDANT'S MOTION TO DISIMSS AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGEMENT**

This matter came on for a hearing before the Honorable Joseph R. Klein, Judge of District Court, on January 31, 2019 on Plaintiffs' Motion for Summary Judgment and Defendant's Motion to Dismiss. Jack Y. Perry and Maren F. Grier appeared on behalf of the Plaintiffs. Ivan M. Ludmer and Kristin R. Sarff appeared on behalf of the Defendant

Based upon the arguments of counsel, as well as the files, records, and proceedings herein, the court makes the following:

ORDER

1. Defendant's Motion to Dismiss is **GRANTED.**
2. Plaintiffs' Motion for Summary Judgment is **DENIED**.
3. The attached memorandum of law is incorporated herein.

BY THE COURT:

Dated: April 30, 2019

BY THE COURT:

Joseph R. Klein
Judge of District Court

Filed in District Court
State of Minnesota
4/30/2019 9:28 AM

FACTUAL BACKGROUND

This case involves a dispute regarding the Minneapolis 2040 Comprehensive Plan ("2040 Plan"). Plaintiffs' Complaint asks that Defendant City of Minneapolis ("City") be ordered to perform an exhaustive environmental review for its 2040 Plan under the Minnesota Environmental Rights Act ("MERA"). Defendant asserts that such a review is not required by MERA nor is it possible for a comprehensive plan.

Plaintiff Smart Growth Minneapolis is an organization operated primarily to conduct activities related "to the common good and general welfare of the Minneapolis community." Plaintiffs Audubon Chapter of Minneapolis and Minnesota Citizens for the Protection of Migratory Birds are organizations dedicated to bird conservation.

The 2040 Plan is the comprehensive plan of the City of Minneapolis, which controls the land use development within its jurisdictional boundaries. Pursuant to the Metropolitan Land Planning Act ("MLPA"), the City of Minneapolis is required to provide the Metropolitan Council with an updated comprehensive plan every ten years. A City Council vote to submit the 2040 Plan to the Metropolitan Council was scheduled for December 7, 2018.

Prior to the City Council vote on the 2040 Plan, Plaintiffs filed a Motion for a Temporary Restraining Order, dated December 4, 2018, seeking to enjoin the Defendant from approving the submission of the 2040 Plan. Following a Motion Hearing, held on December 6, 2018, Plaintiffs' Motion was denied. The court concluded that the Plaintiffs failed to sufficiently prove the type of irreparable harm required for the granting of a Temporary Restraining Order. Additionally, in

Filed in District Court
State of Minnesota
4/30/2019 9:28 AM

applying the *Dahlberg*[1] factors, the court concluded that the Motion for Temporary Restraining Order must be denied.

On December 7, 2018, the Minneapolis City Council voted in favor of submitting the 2040 Plan to the Metropolitan Council.

On December 21, 2018 Defendant filed a Motion to Dismiss Plaintiffs' Complaint. On January 3, 2019 Plaintiffs filed a Motion for Summary Judgment. Both Motions were heard by the court on January 31, 2019.

CONCLUSIONS OF LAW

I. Defendant's Motion to Dismiss is granted.

A. Standard of review on a motion to dismiss.

On a motion to dismiss, the court is to "consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the non-moving party." *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008) (quotation omitted). Under Minnesota's liberal notice pleading standard, to survive a motion to dismiss, a plaintiff's claim need only be pled such that it is possible that some evidence could be produced, consistent with the pleader's theory which would entitle them to relief. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 605 (Minn. 2014) (citing *Hansen v. Robert Half Int'l, Inc.*, 813 N.W.2d 906, 917-18 (Minn.2012)). But a plaintiff must plead facts; courts are not bound by legal conclusions. *Hebert*, 744 N.W.2d at 235; see also *Finn v. Alliance Bank*, 860 N.W.2d 638, 653-54 (Minn. 2015). And if the facts alleged are not legally sufficient to state a claim for relief, then the motion to

[1] The *Dahlberg* factors include: 1) the nature of the relationship between the parties before the dispute giving rise to the request for relief; 2) the harm to be suffered by the moving party if the injunction is denied as compared to that inflicted on the non-moving party if the injunction is granted; 3) Plaintiffs' likelihood of success on the merits; 4) the public interest; and 5) the administrative burden in enforcing an injunction. *Dahlberg Bros. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965).

Filed in District Court
State of Minnesota
4/30/2019 9:28 AM

dismiss must be granted. *Id.*; Minn. R. Civ. P. 12.02(e). In addition to those facts pled in the complaint, a court may also consider documents referenced in the complaint, and facts and documents that are properly subject to judicial notice. See *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 489-90 & n.5 (Minn. 2004).

In this case, Defendant's Motion to Dismiss is granted because the claims in Plaintiffs' Complaint are barred by Minnesota law and fail to state a claim upon which relief can be granted. Additionally, Plaintiffs' Motion for Summary Judgment is denied for the same reasons that Defendant's Motion to Dismiss is granted. Even so, Plaintiffs' Motion for Summary Judgment is premature and failed to satisfy the requirements of identifying undisputed facts and presenting admissible evidence for such a motion.

B. Plaintiffs' request for relief cannot be granted because their claims are barred by Minnesota law.

In their Complaint, Plaintiffs claim in a conclusory fashion that they have made a prima facie showing under the Minnesota Environmental Right Act ("MERA") that the 2040 Plan is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state.[2] Plaintiffs now seek to enjoin Defendant from approving the 2040 Plan unless and until Defendant satisfies its MERA-required rebuttal or affirmative defense.[3] According to Plaintiffs, "an exhaustive environmental review is its only realistic way to satisfy its MERA-required 'rebut[tal]' or 'affirmative defense' to Plaintiffs' 'prima facie showing.'" This

[2] This court has already found that Plaintiffs failed to show causation when asserting their prima facie case. See *Order Denying Motion for Temporary Restraining Order*.

[3] When a plaintiff has made a prima facie showing under MERA, the defendant has to either (1) rebut the showing by the submission of evidence to the contrary, or (2) show, by way of an affirmative defense, that there is no feasible and prudent alternative and the conduct at issue is consistent with and reasonably required for promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone do not constitute a defense. Minn. Stat. § 116B.04.

Filed in District Court
State of Minnesota
4/30/2019 9:28 AM

court, however, cannot grant Plaintiffs' request for relief because it is barred under Minnesota law. This court cannot order environmental review of a comprehensive plan under MERA because of the exemption provided by MEPA.

1. MEPA exempts comprehensive plans from environmental review and this exemption applies to environmental review under MERA.

MERA, which was passed in 1971, was the first piece of environmental legislation in Minnesota. *People for Envtl. Enlightenment & Responsibility (PEER), Inc. v. Minnesota Envtl. Quality Council*, 266 N.W.2d 858, 865 (Minn. 1978). MERA exists to provide private citizens with "an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction." *Id.*; Minn. Stat. § 116B.01. In 1973, three other pieces of legislation were enacted to complement MERA, including the Minnesota Environmental Policy Act ("MEPA"). *Id.* "Although the focus of each of these statutes is slightly different, together they are part of a coherent legislative policy." *Id.*

Environmental review in Minnesota is governed by the Minnesota Environmental Policy Act ("MEPA") and the rules adopted by the Environmental Quality Board ("EQB"). *In re Declaring a Negative Need for an Envtl. Impact Statement for Proposed Living Word Bible Camp Project*, A13-1153, 2014 WL 3557954, at *4 (Minn. Ct. App. July 21, 2014) (citing Minn. R. 4410.1000–.3100 (2011)). The legislature conferred rulemaking authority to the EQB, requiring it to adopt rules implementing MEPA. *Id.* (citing Minn. Stat. § 116D.04, subd. 5a); see also *In re Envtl. Assessment Worksheet for 33rd Sale of State Metallic Leases in Aitkin, Lake, Saint Louis Ctys.*, 838 N.W.2d 212, 216 (Minn. Ct. App. 2013) (citing Minn.Stat. § 116D.04, subd. 2a(a)) ("The necessity for environmental review is governed by rules adopted by the EQB pursuant to the Minnesota Environmental Protection Act (MEPA), Minn.Stat. §§ 116D.01–.11 (2012)."). "Rules adopted by the EQB pursuant to this statutory authority have 'the force and effect of law.'"

Filed in District Court
State of Minnesota
4/30/2019 9:28 AM

Id. (citing Minn. Stat. § 14.38, subd. 1 (2012)). Thus, this court looks to the rules adopted by the EQB for guidance on reconciling the construction of MERA following the passage of MEPA.

The rules promulgated by the EQB exempt "adoption and amendment of comprehensive and other plans" from environmental review. Minn. R. 4410.4600, subps. 1, 26. The exempted requirements include preparation of an Environmental Assessment Worksheet ("EAW"), Environmental Impact Statement ("EIS"), or other Alternative Urban Areawide Review ("AUAR") processes. Minn. R. 4410.0200-3100, 4410.3600-4000, 4410.4300-4500, 4410.6000-4410.6500. The exemption also prohibits discretionary environmental review of comprehensive plans under MEPA. Minn. R. 4410.4500 ("A governmental unit with jurisdiction may order the preparation of an EAW for any project that does not exceed the mandatory thresholds designated in part 4410.4300 or 4410.4400 if the governmental unit determines that because of the nature or location of the proposed project the project may have the potential for significant environmental effects, and the project is not exempted pursuant to part 4410.4600."); see also Minn. R. 4410.1000, subp. 3(A) (explaining that discretionary EAWs may be performed "when a project is not exempt under part 4410.4600"). Accordingly, comprehensive plans are exempt from mandatory and discretionary environmental review.

Minnesota's comprehensive planning process and requirements are governed by the Metropolitan Land Planning Act ("MLPA"). See 1976 Minn. Laws 292. The required contents of comprehensive plans are governed by Minn. Stat. § 473.859. Plans must "contain objectives, policies, standards and programs to guide public and private land use, development, redevelopment and preservation for all lands and waters." Minn. Stat. § 473.859, subd. 1. The Metropolitan Council reviews the plans for conformance and consistency. Minn. Stat. § 473.175, subd. 1. The

Filed in District Court
State of Minnesota
4/30/2019 9:28 AM

legislature did not provide any other mechanism to review comprehensive plans in the MPLA or provide anything to suggest that they would be reviewable under the previously-passed MERA.

2. MEPA's exemptions bars the court from granting environmental review under MERA.

Plaintiffs argue that environmental review of the 2040 Plan may be compelled under MERA notwithstanding MEPA's exemption. Plaintiffs' argument fails. As this court has already noted in the Order Denying Motion for Temporary Restraining Order, Plaintiffs have provided no case law involving a project or plan that is exempt from MEPA but subject to MERA. Plaintiffs do not cite any application of MERA that subjects comprehensive plans to environmental review, or that subjects local governments to requirements from which they are otherwise expressly exempted under MEPA.

MEPA and MERA are "part of a coherent legislative policy." *PEER*, 266 N.W.2d at 865. As a matter of statutory construction, courts are supposed to harmonize those laws. *Id*. at 866. See also *No Power Line, Inc. v. Minn. Envtl. Quality Council*, 262 N.W.2d 312, 323 n.30 (Minn. 1977). "Statutes relating to the same subject are presumed to be imbued with the same spirit and to have been passed with deliberation and full knowledge of all existing legislation on the subject and regarded by the lawmakers as being parts of a connected whole." *State v. Clark*, 755 N.W.2d 241, 249 (Minn. 2008) (quotation omitted). If adopted, Plaintiffs' interpretation, as set forth in their Complaint, would shatter the harmony between MERA and MEPA.

Contrary to Plaintiffs' arguments, the clear, unambiguous exemption contained in MEPA cannot be overridden by MERA. MEPA and its express exemption for comprehensive plans were enacted after MERA, so MERA cannot supersede the exemption. See Minn. Stat. § 645.26, subd. 4 ("When the provisions of two or more laws passed at different sessions of the legislature are

Filed in District Court
State of Minnesota
4/30/2019 9:28 AM

irreconcilable, the law latest in date of final enactment shall prevail."); see also *Holte v. State*, 467 N.W.2d 346, 348-49 (Minn. Ct. App. 1991) (noting that "had the legislature wished to subject the Grasshopper Control Act to MERA it could have done so explicitly" and "conclud[ing] the Grasshopper Control Act, the later enactment, is not subject to MERA."). Additionally, the specific exemption in MEPA overrides the general provisions of MERA. Minn. Stat. § 645.26, subd. 1 ("When a general provision in a law is in [irreconcilable] conflict with a special provision in... another law, ... the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such general provision shall prevail."). "[T]he canon has particular applicability when, as here, the Legislature 'has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions.'" *Connexus Energy v. Comm'r of Revenue*, 868 N.W.2d 234, 242 (Minn. 2015) (quoting *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012).

Based on the forgoing, the court cannot grant the relief sought by Plaintiffs. Namely, the court cannot order an environmental review of the 2040 Plan under MERA because comprehensive plans are exempt from such review under MEPA. Accordingly, Defendant's Motion to Dismiss is granted.

C. Plaintiffs have not shown causation under MERA because they do not challenge a discrete, identifiable project.

The court has found that comprehensive plans are exempt from environmental review in Minnesota, under MEPA. This provides a basis for dismissal of Plaintiffs' Complaint as a matter of law. Although this court need go no further than this analysis as support for dismissing Plaintiff's Complaint, further reason supporting dismissal bears mentioning.

Filed in District Court
State of Minnesota
4/30/2019 9:28 AM

Plaintiffs do not assert violation of an environmental quality standard, therefore, Plaintiffs must show that the City "has, or is likely to cause the pollution, impairment, or destruction" of natural resources. Minn. Stat. § 116.04(b). Plaintiffs, however, do not identify or challenge a discrete, identifiable project or act that is likely to cause pollution, impairment, or destruction of natural resources. Rather, Plaintiffs make an unsupported assertion that the approval of the 2040 Plan will cause "an immediate and full build-out of City per its 2040 Plan." Plaintiffs also rely on assumptions and inferences regarding projects that may take place following passage of the 2040 Plan. However, as this court has previously found, the unsupported speculations and assumptions asserted by Plaintiffs are not direct enough to implicate MERA.

For causation, "speculative and tenuous" sequences of events are not enough to implicate MERA. See *Stansell v. City of Northfield*, 618 N.W.2d 814, 820 (Minn. Ct. App. 2000). *Stansell* involved a challenge to city ordinances permitting large-scale retail projects, which the challenger argued would lead to a decline in sales in a historic district, implicating MERA. *Id*. The court rejected the "chain of causation" as "too attenuated as a matter of law." *Id*.; see also *Olean v. Pomroy*, 2009 WL 511757, at *7 (Minn. Ct. App. Mar. 3, 2009) (affirming district court's dismissal of MERA claim because claimed acts did not cause asserted environmental effects); cf. *State ex rel. Swan Lake Area Wildlife Ass'n v. Nicollet Cty. Bd. of Cty. Comm'rs*, 771 N.W.2d 529, 538 (Minn. Ct. App. 2009) (reversing finding of MERA liability for the Department of Natural Resources because, "[a]lthough the DNR had the authority to order the County to repair the dam... its decision not to issue such an order was discretionary, and this record does not support the conclusion that the DNR's inaction was the cause of the dam's deterioration and the lowering of the lakes' water levels."); *Matter of Univ. of Minnesota*, 566 N.W.2d 98, 105-06 (Minn. Ct. App. 1997) (deciding under MEPA that "the MPCA is not required to speculate as to future

Filed in District Court
State of Minnesota
4/30/2019 9:28 AM

environmental effect were the city's development of the area already accomplished"). As in *Stansell*, Plaintiffs can point to no City project or action that would itself cause any pollution, impairment, or destruction of natural resources. Accordingly, Plaintiffs fail to establish a prima facie showing under MERA.

II. Plaintiffs' Motion for Summary Judgment is denied.

Summary judgment is appropriate when there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. See Minn. R. Civ. P. 56.03; *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997); *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979). The court must grant summary judgment when the existing record, including pleadings, exhibits, and affidavits, shows that the non-moving party has established no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03.

For the same reasons that Defendant's Motion to Dismiss is granted, Plaintiffs' Motion for Summary Judgment is denied. Plaintiffs are not entitled to judgment as a matter of law because they have failed to state a claim upon which relief can be granted.

JRK